

EXHIBIT A

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***Via Certified Mail –
Return Receipt Requested***

June 17, 2019

Napa County Public Administrator
Napa County Public Guardian
650 Imperial Way, Suite 101
Napa, CA 94559

Board of Supervisors
County of Napa
1195 Third Street, Room 301
Napa, CA 94559

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution
Control Act (Clean Water Act)**

Dear Napa County Public Administrator, Napa County Public Guardian, and Members of the
Board of Supervisors:

STATUTORY NOTICE

This Notice is provided on behalf of our client California River Watch (“River Watch”) with regard to violations of the Clean Water Act (“CWA” or “Act”; 33 U.S.C. § 1251 *et seq.*) that River Watch alleges are occurring through the ownership and/or operation of the sewage collection, treatment system and storage system (hereafter “Moore Sewage Facility” or “Facility”) located adjacent to the former Moore’s Resort at 6 Cuttings Wharf Road in Napa, California.

River Watch hereby places the Napa County Public Administrator and Napa County Public Guardian as Guardian and Administrator of the Estate of Rose Mary Moore¹ and Guardian and Administrator of the Estate of Rose Mary Moore and County of Napa² (collectively, the “Dischargers”) on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Dischargers for being in violation of the Clean

¹The Estate of Rose Mary Moore is the owner of the Moore Sewage Facility.

²The County of Napa through its guardian and administrative powers is the operator of the Moore Sewage Facility via its authority and control, under the Independent Administration of Estates Act.

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Water Act as the result of discharging pollutants from a point source to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a National Pollution Discharge Elimination (“NPDES”) permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. River Watch contends the Dischargers are discharging pollutants from point sources within the Moore Sewer Facility to wetlands and drainages directly adjacent to the Napa River, without having obtained an NPDES permit.

BACKGROUND

The Moore Sewage Facility receives waste from residential homes. The Facility is comprised of tanks, pumps and terminal percolation ponds. The Facility was originally installed in the late 1950’s. The ponds, which are point sources, appear to be unlined impoundments within wetlands and drainages adjacent to the Napa River - all waters of the United States. The Napa River is CWA § 303(d) listed for nutrients, sediment and pathogens. River Watch alleges the Facility discharges both nutrients and pathogens to the Napa River.

Currently the wastewater sources to the ponds consists of 10 privately owned single-family homes. Originally the Facility also served 21 single family homes, the resort and a restaurant. Records from the Regional Water Quality Control Board San Francisco (“RWQCB-SF”) note the Facility used to include the resort, 20+ rental homes (variously reported as 21 to 25), plus 10 single family homes and a store/restaurant. All rentals were terminated and occupants moved out in 2010 and 2011. Records from the RWQCB-SF estimated sewage volume was 4,400 gallon per day. There is currently no flow monitoring equipment installed or flow measurements performed. Using data received from the County of Napa, the current discharge rate is estimated to be between 1000 to 2000 gallons per day.

The collection system discharges to 2 Imhoff tanks which provide only minimal treatment. Records report the restaurant had 1 grease trap. The dimensions and capacity of the 2 Imhoff tanks are uncertain. The percolation ponds originally received waste from 2 separate collection systems. At present, and historically, the collection systems are connected to and discharge into the North Pond and South Pond respectively. The North System, formerly served the rental housing units and restaurant. The South System serves the 10 single family homes.

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The Facility is located in the Napa River watershed on the west bank of the Napa River, about 3 miles south of the City of Napa. The 10 current single-family dwellings referred to herein are located along the southwesterly bank of a short straight dead end “boat” channel, contiguous on one end with the Napa River at the mouth of an unnamed tributary. Records reviewed by River Watch indicate boats can still enter and leave the channel with suitable high tide conditions. The ponds are located on the south side of the unnamed tributary within the wetlands adjacent to the Napa River, in an area which is tidally influenced. The adjacent wetlands, tidal waters, fresh waters, unnamed tributary, boat channel and the Napa River are all waters of the United States.

Records reviewed by River Watch indicate the Imhoff tanks are partially submerged during the wet season. There is a history of pipe breaks in the collection and transport system before and after the Imhoff tanks. Soils in the area are high-shrink-swell clay resulting in frequent seasonal ground heaving which can lead to pipe breaks. Due to pipe breaks, sewage has been released into ditches and low parts of the property. Treatment of these spills has included applications of bleach which is then washed into waters of the United States. All drainages and ditches on the property connect to the Napa River via tributaries and wetlands, and are waters of the United States.

During an inspection of the Facility in 2011, the pond berms were observed by the RWQCB-SF to be in a state of considerable disrepair with uneven tops and sides, and in several places without even a clear stable walking path around the berm top. The external side of the pond berms were observed to be exposed on several sides to either surface water drainage waters or tidally-influenced waters. Currently the pond berms are still in considerable disrepair with erosion, animal burrowing, and seepage clearly visible.

During the RWQCB-SF’s 2011 inspection, the South Pond freeboard appeared to be only 3 feet at the most. In the North Pond, with significantly reduced flows due to the closure of all the rental homes, solids which had accumulated in the pond were visible. The total depth of the pond is unknown. There is no pond depth or freeboard gauge present. However, the top of the solids appeared to be between 3 or 4 feet below pond berm top. So the amount, quantity or percent of total capacity of accumulated solids is unknown. Based on visual observation, the pond appeared to be full of solid waste with less than 1 foot of liquid water depth feasible. In the South Pond the water level was seen to be between 3 to 4 feet below top of berm. Depth of accumulated sludge was uncertain and the depth of the pond was unknown. The RWQCB-SF surmised that if the South Pond is similar to the North Pond, then the South Pond may also be almost full of solids and having very little actual liquid water depth (between 1 and 2 feet) available for treatment or storage. Although the North Pond does not appear to be in use today,

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due to the solid wastes, the rain water forces pollutants from that pond into the adjacent wetlands via percolation.

The South Pond also percolates pollutants to the adjacent wetlands and clearly lacks sufficient capacity to hold all of the waste. This may explain the signs of erosion, which have been reported by eye witnesses in the past, possibly caused by over-topping. Additionally these ponds are in constant contact with tributary groundwater with flow directly to the adjacent wetlands. To be clear, although the ponds are adjacent to the wetlands, it is more precise to say that the ponds are actually impoundments within the wetlands and thus the ponds are not only point sources, but also part of the waters of the United States.

The RWQCB-SF's Basin Plan identifies multiple beneficial uses for the Napa River watershed in the vicinity of the Facility including navigation, water contact recreation, non-contact water recreation, cold fresh water habitat, wildlife habitat, preservation of rare and endangered species, and fish migration and spawning. The above-described illegal discharges cause prohibited pollution by unreasonably affecting these beneficial uses. As the Napa River is CWA § 303(d) listed for pathogens and nutrients, River Watch is understandably concerned regarding the effects of these unpermitted discharges of untreated and partially treated sewage on this impaired waterway, as well as the critical habitat in and around this sensitive ecosystem.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specified standard, limitation, or order alleged to have been violated.

The specified standard or limitation alleged to have been violated is CWA § 301(a), 33 U.S.C. § 1311(a) which states in pertinent part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful." As stated previously, the Dischargers have no NPDES permit authorizing the discharging of pollutants to waters of the United States nor are the Dischargers in compliance with any other section of the CWA that would allow them to discharge pollutants from a point source to a water of the United States.

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2. The Activity Alleged to Constitute a Violation.

The Facility components include the collection system, Imhoff tanks and ponds - all point sources under the CWA. There is a history of pipe breaks and pond overflows resulting in pollutants being discharged into waters of the United States. These violations of the CWA are continuing in nature. Records on file with the RWQCB-SF indicate the ponds are subject to flooding from storm events such as occurred this year when Cuttings Wharf was partially submerged and, it is believed, the ponds were also overtopped. Even during non-flood periods the unlined ponds percolate to the Napa River. The ponds are in contact with the groundwater and are discharging via percolation to the adjacent wetlands and drainages on a daily basis. The ponds are impoundments within the wetlands adjacent to the Napa River. As such discharges to the ponds are discharges to waters of the United States. Discharges from the ponds, whether surface or subsurface are also discharges of pollutants from a point source to a water of the United States. The pollutants include sewage, pathogens, nutrients, and other waste commonly associated with domestic discharges of this type. The Napa River, adjacent wetlands and drainages are all waters of the United States. Although a waste discharge to land permit ("State WDR") was issued to the Moore's Resort in 1986, the Dischargers are not in possession of a NPDES permit authorizing the discharge of pollutants to a water of the United States.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations identified in this Notice are the Estate of Rose Mary Moore as owner/operator of the Facility and the Napa County Public Administrator and Napa County Public Guardian, Administrator of the Estate of Rose Mary Moore and County of Napa as operators of the Facility, collectively identified in this Notice as the "Dischargers."

4. The Location of the Alleged Violation.

The location of the various violations alleged in this Notice is the land at and adjacent to the former Moore's Resort located at 6 Cuttings Wharf Road in Napa, California, including the waters of the Napa River – a water of the United States.

The former Moore's Resort is located on the west bank of a tidal section of the Napa River. Moore's Landing has been closed for some time. The sewage collection and treatment system identified in this Notice continues to operate to serve the private dwellings and homes located along Cuttings Wharf Road as documented by the License and Easement Agreement

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whereby Charles N. Moore and Rose Mary Moore, past owners of Napa County Assessor's Parcels Nos. 047-052-009, 047-262-002 and 047-262-003, entered into a license agreement with the owners of the other parcels listed in the License and Easement Agreement granting them an easement for the purpose of a sewage line conveying sewage or sewage effluent from said parcels over and across Parcel No. 047-052-009.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is June 17, 2014 to June 17, 2019. This Notice includes all violations of the CWA which have occurred and will occur after the range of dates currently covered. The pond discharges are continuous, and therefore each day constitutes a violation of the CWA. The discharges from the other parts of the Facility are intermittent but continuing in nature and therefore likely to occur in the future.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol with a mailing address of 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications relating thereto should be directed to Jack Silver, Esquire.

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to the opportunity to tailor remedial measures to the specific operation of the sewage collection and treatment system. Solutions can include: the building of an on-site treatment plant, the shipping of treated sewage out to the County of Napa privately owned treatment works, the installation of individual septic systems, and hooking up the Facility collection system to the County of Napa collection system. Regardless of how the current

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discharges from the 10 single-family dwellings are resolved, the ponds themselves will have to be dredged to remove the solid wastes.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and use the affected watershed for recreation, drinking water, fishing, horseback riding, hiking, photography, and nature walks. The health, use and enjoyment of this natural resource is specifically impaired by the alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day “notice period” to promote resolution of disputes. River Watch encourages the Dischargers to seek to resolve the violations prior to the expiration of the 60-day notice period. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

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Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Northwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100